

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHARD ANDREW BROKER,

Defendant.

Case No. 2:14-cr-00355-JCM-NJK

ORDER

Pending before the Court is Defendant Richard Andrew Broker's motion for psychiatric or psychological evaluation. Docket No. 19. For the reasons stated below, the Court **GRANTS** Defendant's motion in part and **DENIES** it in part.

Defendant is charged in a criminal indictment with mailing threatening communications, in violation of Title 18, United States Code, Section 876(c). Docket No. 1. He appeared before the Court on counsel's motion on February 11, 2016. He made his initial appearance on this indictment on April 4, 2016. Docket No. 13. The Court ordered Defendant remanded to custody and transported to Springfield, Missouri to continue his current civil commitment. *Id.*

The parties agree that Defendant should undergo an examination to determine whether he is presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense. Docket No. 19 at 2; Docket No. 21 at 4. The parties disagree, however, as to whether Defendant should be allowed to select his own examiner. Docket No. 19 at 2; Docket No. 21 at 4.

1 The Court finds that a mental competency evaluation is properly ordered pursuant to 18 U.S.C. §§
2 4241(a) and 4247. As Defendant is not serving a sentence of imprisonment on the instant case, 18 U.S.C.
3 § 4245 does not apply. Further, as Defendant is not a person whose sentence is set to expire, 18 U.S.C.
4 § 4246 does not apply. The parties agree that 18 U.S.C. § 4248 does not apply in the instant case. Docket
5 No. 21 at 2; Docket No. 22 at 2. Therefore, pursuant to 18 U.S.C. § 4247(b), Defendant is not entitled to
6 select an additional examiner.

7 Accordingly,

8 **IT IS ORDERED** that:

9 1. Defendant's motion for psychiatric or psychological evaluation (Docket No. 19) is
10 **GRANTED** in part and **DENIED** in part.

11 2. In accordance with 18 U.S.C. §§ 4241 and 4247, Defendant shall undergo a psychiatric or
12 psychological evaluation at the Springfield, Missouri (USMCFP) facility where he is currently housed to
13 determine:

14 a. whether Defendant is presently suffering from a mental disease or defect rendering
15 him mentally incompetent to the extent that he is unable to understand the nature and consequences of the
16 proceedings against him or to assist properly in his defense; and

17 b. whether Defendant suffered from a mental disease or defect rendering him mentally
18 incompetent at the time of the commission of the offenses charged.

19 3. The examination conducted pursuant to this order shall be conducted by one or more
20 licensed or certified psychiatrists or clinical psychologists, who have not been or are not currently involved
21 in Defendant's treatment at the Springfield facility. 18 U.S.C. § 4247(b).

22 4. Upon request by the Springfield facility, the parties may release to the facility any records
23 which may bear upon a complete and informed evaluation of Defendant's mental competency.

24 5. Within 30 days from today's date, a psychiatric or psychological report shall be prepared
25 by the examiner designated to conduct the psychiatric or psychological examination. The person
26 designated to conduct the psychiatric or psychological examination shall file the report, under seal, with
27 the court and provide copies to Alicia H. Cook, Special Assistant United States Attorney, and to John
28 George, counsel for Defendant.

1 6. The report shall include:

- 2 a. Defendant's history and present symptoms;
- 3 b. A description of the psychiatric, psychological or medical tests that were employed
- 4 and their results;
- 5 c. The examiner's findings;
- 6 d. The examiner's opinions concerning whether Defendant is suffering from a mental
- 7 disease or defect rendering him mentally incompetent to the extent that he is unable to understand the
- 8 nature and consequences of the proceedings against him, or to assist properly in his defense.

9 7. Defendant's request to select his own examiner is **DENIED**.

10 8. The Court finds that the period of time required by the above-described psychiatric or

11 psychological examination of Defendant, and the Court's determination of Defendant's competency to

12 stand trial is excludable time under the United States Constitution, the Speedy Trial Act, 18 U.S.C. §

13 3161(h)(1)(A), and Rule 5.1 of the Federal Rules of Criminal Procedure.

14 9. The Court sets a status hearing on this matter for June 6, 2016, at 10:00 a.m., in Las Vegas

15 Courtroom 3C.

16 IT IS SO ORDERED.

17 DATED: April 26, 2016.

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21 NANCY J. KOPPE

22 United States Magistrate Judge

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